MASTER UTILITY ADJUSTMENT AGREEMENT
(Developer Managed)
Agreement No. 290E-U-0100

THIS AGREEMENT, by and between Central Texas Mobility Constructors, LLC, hereinafter identified as the "Developer", and Austin Water Utilities hereinafter identified as the "Owner", is as follows:

WITNESSETH

WHEREAS, the Central Texas Regional Mobility Authority, hereinafter identified as "CTRMA", is authorized to design, construct, operate, maintain, and improve turnpike projects in conformance with the provisions of *Chapter 370, Texas Transportation Code,* as it may be amended from time to time; and

WHEREAS, CTRMA proposes to construct a turnpike project identified as the Manor Expressway (290 East Toll Project), hereinafter identified as the "Project", and more particularly described by the following limits:

From Station 244+60 to 1576+36.03 Equation Station 473+02 BK= 1473+00 AH; and beginning approximately 1 mile west of Springdale Road to .75 miles east of Parmer Lane.

WHEREAS, CTRMA has entered into a Project Development Agreement with the Texas Department of Transportation, hereinafter identified as "TxDOT"; and

WHEREAS, pursuant to that certain Comprehensive Development Agreement by and between CTRMA and the Developer with respect to the Project dated June 29, 2011, hereinafter identified as the "CDA," , the Developer has undertaken the obligation to design and construct the Project; and

WHEREAS, the Developer's duties pursuant to the CDA include causing the removal, relocation, or other necessary adjustment of existing utilities impacted by the Project, (collectively, the "Adjustment"); and

WHEREAS, CTRMA may request Federal participation in payment of costs incurred in the Adjustment of the Owner's facilities to accommodate the Project; and

WHEREAS, the Developer has notified Owner that certain of its facilities and appurtenances (the "Owner Utilities") are in locational conflict with the Project, (and/or with the "Ultimate Design", as hereinafter defined in Section 3), and has requested that the Owner undertake the Adjustment of the Owner Utilities as necessary to accommodate the Project and the Ultimate Design, and

WHEREAS, the Owner Utilities and the proposed Adjustment of the Owner Utilities are described as follows : Relocation of existing 2.5" to 66" water mains and installation of 8" wastewater main. Construction plans to be prepared by CTMC and approved by Owner Utility.

WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the Developer and the Owner desire to implement the Adjustment of the Owner Utilities by entering into this Agreement (the "Agreement").

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the Developer and the Owner agree as follows:

1. **Preparation of Plans**. [Check one box that applies:]

X The Developer has hired engineering firm(s) acceptable to the Owner to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates for the proposed Adjustment of the Owner Utilities. The Developer represents and warrants that the Plans will conform to the most recent Utility Accommodation Rules issued by the Texas Department of Transportation ("TxDOT"), as set forth in 43 Tex. Admin. Code, Part 1, Chapter 21, Subchapter C, *et seq*. (the "UAR"). By the signing of the Plans, Owner approves and confirms that the Plans are in compliance with Owner's Standards described in Paragraph 3(c).

☐ The Owner has provided plans, required specifications and cost estimates, to be attached hereto as Exhibit A upon approval of Developer and Owner (collectively, the "Plans"), for the proposed Adjustment of the Owner Utilities. The Owner represents and warrants that the Plans conform to the UAR and to the Ultimate Design provided to Owner by the Developer. By its execution of this Agreement, the Developer hereby approves the Plans and represents and warrants the Plans conform to the UAR and the Ultimate Design. The Owner also has provided to the Developer a utility plan view map illustrating the location of existing and proposed utility facilities on the Developer's right-of-way map and/or schematic of the Project. With regard to its preparation of the Plans, Owner represents as follows *[check one box that applies if compensable]:*

- ❑ The Owner's employees were utilized to prepare the Plans, and Owner represents that the charges therefore do not exceed the Owner's typical costs for such work.

- ❑ The Owner utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for Adjustment of the Owner Utilities described herein, and do not include fees for work done on any other project. Owner represents that the fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the Project for comparable work for the Owner.

2. **Review by CTRMA and TxDOT**. The parties hereto acknowledge and agree as follows:

(a) Upon execution of this Agreement by both the Developer and the Owner, pursuant to the CDA the Developer will submit this Agreement, together with the Plans, to CTRMA for its review, comment and acceptance as part of a package referred to as a "Utility Assembly". The Developer and the Owner acknowledge that TxDOT may also review the Utility Assembly. The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to both parties, to respond to any comments made by CTRMA and TxDOT thereon. Without limiting the generality of the foregoing, (i) the Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the Developer in response to CTRMA and TxDOT comments within fourteen (14) business days after receipt of such modifications; and (ii) if the Owner originally prepared the Plans, the Owner agrees as reasonable and necessary to modify the Plans in response to CTRMA and TxDOT comments and to submit such modified Plans to the Developer for its comment and/or acceptance (and re-submittal to CTRMA (and TxDOT) for its comment and/or acceptance) within fourteen (14) business days after receipt of CTRMA's comments. The Owner's failure to timely respond to any modified Plans submitted by the Developer pursuant to this paragraph shall not be deemed the Owner's acceptance of same. If the Owner fails to timely prepare modified Plans which are its responsibility hereunder, then the Developer shall have the right to modify the Plans for the Owner's approval as if the Developer had originally prepared the Plans. The process set forth in this paragraph will be repeated until the Owner, the Developer, and CTRMA have all approved this Agreement and accepted the Plans.

(b) The parties hereto acknowledge and agree that CTRMA's review, comments, and/or approval of a Utility Assembly or any component thereof is solely for the purpose of ascertaining matters of particular concern to CTRMA, and CTRMA has, by its review, comments, and/or approval of such Utility Assembly or any component thereof undertakes no duty to review the Utility Assembly or its

components for their quality or for the adequacy of Adjusted facilities (as designed) for the purposes for which they are intended to be used or for compliance with law or applicable standards (other than CTRMA requirements).

3. **Design and Construction Standards.** All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:

(a) All applicable local, state and federal laws, regulations, decrees, ordinances, policies, requirements of the CDA, and policies of CTRMA;

(b) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and

(c) The standard specifications, standards of practice, and construction methods, which the Owner customarily applies to facilities comparable to Owner Utilities constructed by Owner or for Owner by its contractors at Owner's expense, which are current at the time this Agreement is signed by the Owner, and which Owner has submitted to Developer in writing (collectively, the "Owner's Standards").

Such design and construction also shall be consistent and compatible with (i) the Developer's Project design and construction of the Project, (ii) CTRMA's projected design for the Project as it will ultimately be built out in the future (the "Ultimate Design"), and (iii) any other utilities being installed in the same vicinity. The Owner will acknowledge receipt from the Developer of acceptable Project plans and Ultimate Design documents as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

4. **Construction by the Developer.**

(a) The Owner hereby requests that the Developer perform the construction necessary to adjust the Owner Utilities and the Developer hereby agrees to perform such construction. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans including the Plans as modified pursuant to Paragraph 17).

(b) The Developer shall retain such contractor or contractors as are necessary to Adjust the Owner Utilities through the Developer's normal procedures.

(c) The Developer shall obtain all permits necessary for the construction to be performed by the Developer hereunder, and the Owner shall cooperate in that process as needed.

5. **Developer Responsible for Costs of Work.** With the exception of any "Betterment" as defined in Paragraph 10, all work to be performed pursuant to this Agreement shall be at

the sole cost and expense of the Developer, including but not limited to the engineering and inspection costs of the Owner. All costs charged to the Developer by the Owner shall be reasonable and shall be computed using rates and schedules not exceeding those applicable to the similar work performed by or for the Owner at the Owner's expense. The costs paid by the Developer pursuant to this Agreement shall constitute full compensation to the Owner for all costs incurred by the Owner in Adjustments to the Owner Utilities (including without limitation costs of relinquishing and/or acquiring right of way) and, except to the extent that CTRMA has withheld funds from the Developer due to a breach by the Developer which has damaged the Owner, CTRMA shall have no liability to the Owner for any such costs. Owner expressly acknowledges that it shall only be entitled to compensation for any Adjustment(s) covered by this Agreement, including costs with respect to real property interests (either acquired or relinquished), from the Developer as set forth in this Agreement, and specifically acknowledges that it shall not be entitled to compensation or reimbursement from CTRMA.

6. **Costs of the Work.**

The costs for Adjustment of the Owner Utilities shall be derived from (i) the accumulated total of costs incurred by the Developer for design and construction of such Adjustment ("direct costs"), plus (ii) the Owner's other related costs ("indirect costs"), to the extent permitted pursuant to Paragraph 6(c) (including without limitation the eligible engineering costs incurred by the Owner for design or design review prior to execution of this Agreement (to the extent permitted pursuant to Paragraph 6(c), plus (iii) the Owner's right of way acquisition costs, if any, which are reimbursable pursuant to Paragraph 16. The Owner's indirect costs are attached hereto as part of Exhibit A.

(a) The Owner's indirect costs associated with Adjustment of the Owner Utilities shall be developed pursuant to the method checked and described below *[check only one box]*:

☐ (1) Actual related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body; or

X☐ (2) Actual related indirect costs accumulated in accordance with an established accounting procedure developed by the Owner and which the Owner uses in its regular operations; or

☐ (3) The agreed sum of $

as supported by the analysis of estimated costs attached hereto as part of Exhibit A.

(b) Eligible Owner indirect costs shall include only those authorized under 23 C.F.R. Part 645, Subpart A. The Owner agrees that costs referenced in 23 C.F.R. Section

645.117(d)(2) are not eligible for reimbursement. These regulations can be found at: http://www.access.gpo.gov/nara/cfr/waisidx_03/23cfr645_03.html

7. **Billing, Payment, Records and Audits: Actual Cost Method.** The following provisions apply if the Owner's indirect costs are developed under procedure (1) or (2) described in Paragraph 6(b):

(a) The Developer shall, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement and upon receipt of a final invoice complying with the applicable requirements of Paragraph 9, make payment in the amount of ninety percent (90%) of the Owner's eligible indirect costs as shown in such final invoice (less amounts previously paid, and applicable credits). After completion of the Developer's audit referenced in Paragraph 7(c) and the parties' mutual determination of any necessary adjustment to the final invoice resulting therefrom, the Developer shall make any final payment due so that total payments will equal the total amount reflected on such final invoice (as adjusted, if applicable).

(b) X When requested by the Owner and properly invoiced in accordance with Paragraph 9, the Developer shall make intermediate payments to the Owner based upon the progress of the work completed at not more than monthly intervals Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

(c) The Owner shall maintain complete and accurate cost records for all work performed pursuant to this Agreement, in accordance with the provisions of 23 C.F.R. Part 645, Subpart A. The Owner shall maintain such records for four (4) years after receipt of final payment hereunder. CTRMA, the Developer and their respective representatives shall be allowed to audit such records during the Owner's regular business hours. Unsupported charges will not be considered eligible for reimbursement. The parties shall mutually agree upon (and shall promptly implement by payment or refund, as applicable) any financial adjustment found necessary by CTRMA's and/or Developer's audit. TxDOT, the Federal Highway Administration, and their respective representatives also shall be allowed to audit such records upon reasonable notice to the Owner, during the Owner's regular business hours.

8. **Billing and Payment: Agreed Sum Method.** If the Owner's indirect costs are developed under procedure (3) described in Paragraph 6(b), then the Developer shall, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement and upon receipt of an invoice complying with the applicable requirements of Paragraph 9, make payment to the Owner in the agreed amount.

9. **Invoices.** Each invoice submitted by the Owner (i) shall be prepared in the form and manner prescribed by 23 C.F.R. Part 645, Subpart A, and (ii) if the Owner's indirect costs

are developed under procedure (1) or (2) described in Paragraph 6(b), shall list each of the services performed, the amount of time spent and the date on which the service was performed. The original and three (3) copies of each invoice shall be submitted to the Developer at the address for notices stated in Paragraph 23, unless otherwise directed by the Developer pursuant to Paragraph 23. The Owner shall make commercially reasonable efforts to submit final invoices not later than one hundred twenty (120) days after completion of work. The Owner hereby acknowledges and agrees that any of its costs not submitted to the Developer within twelve (12) months following completion of all Adjustment work to be performed by both parties pursuant to this Agreement shall be deemed to have been abandoned and waived.

10. **Betterment and Salvage.**

(a) For purposes of this Agreement, the term "Betterment" means any upgrading of an Owner Utility being Adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Owner, including but not limited to an increase in the capacity, capability, efficiency or function of the Adjusted Owner Utilities over that provided by the existing Owner Utilities, or an expansion of the existing Owner Utilities; provided, however, that the following are not considered Betterments:

(i) any upgrading which is required for accommodation of the Project;

(ii) replacement devices or materials that are of equivalent standards although not identical;

(iii) replacement of devices or materials no longer regularly manufactured with the next highest grade or size;

(iv) any upgrading required by applicable laws, regulations or ordinances;

(v) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); or

(vi) any upgrading required by the Owner's Standards meeting the requirements of Paragraph 3(c).

(b) It is understood and agreed that neither CTRMA nor the Developer will pay for any Betterments and that the Owner shall not be entitled to payment therefore. No Betterment may be performed in connection with the Adjustment of the Owner Utilities which is incompatible with the Project or the Ultimate Design or which cannot be performed within the other constraints of applicable law, any applicable governmental approvals, and the requirements imposed on the Developer by the CDA, including without limitation the scheduling requirements

thereunder. Accordingly, the parties agree as follows *[check the one box that applies, and complete if appropriate]*:

☐ The Adjustment of the Owner Utilities pursuant to the Plans does not include any Betterment.

X☐ The Adjustment of the Owner Utilities pursuant to the Plans includes Betterment to the Owner Utilities by reason of :the demo of an existing 12" Asbestos Concrete Water line and replacing the existing facility with a new 12" PVC to include additional encasement and other betterments directed by the owner utility in the course of engineering design of the Project. The Developer will provide to the Owner comparative estimates for (i) all costs for work to be performed by the Developer pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the Owner. The estimated amount of the Developer's costs for work hereunder and currently identified which is attributable to Betterment is $59,757.75, calculated using the actual anticipated cost of work. Any and all additional betterment authorized by the Owner Utility shall not exceed a maximum total amount of $300,000.00 for the entire project.

(c) If Paragraph 10(b) identifies Betterment, then the Owner shall advance to the Developer, at least fourteen (14) business days prior to the date scheduled for commencement of construction for Adjustment of the Owner Utilities or within thirty days of the date of execution of this Agreement, which ever is later, the estimated cost attributable to Betterment as set forth in Paragraph 10(b). *[If Paragraph 10(b) identifies Betterment check the one appropriate provision]*:

☐ The estimated cost stated in Paragraph 10(b) is the agreed and final amount due for Betterment hereunder, and accordingly no adjustment (either up or down) of such amount shall be made based on actual Betterment costs.

X☐ The Owner is responsible for the Developer's actual cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement, (i) the Owner shall pay to the Developer the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the Developer shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the Owner shall be due within sixty (60) calendar days after Owner's receipt of the Developer's invoice therefore or within thirty days of any required approval of additional funding by Owner's governing body, whichever is later, together with supporting documentation; any refund shall be due

within sixty (60) calendar days after completion of the Adjustment work hereunder. The actual cost of Betterment incurred by the Developer shall be calculated based on the actual cost of all work performed by the Developer pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the Developer to the Owner.

(d) If Paragraph 10(b) identifies Betterment, the parties shall mutually determine the appropriate portion, if any, of the Owner's indirect costs which were increased by such Betterment. Neither party shall unreasonably withhold or delay its approval of a proposal in this regard made by the other party. Owner's invoice to the Developer for its indirect costs shall credit the Developer with any Betterment amount determined by the parties pursuant to this Paragraph 10(d).

(e) For any Adjustment from which the Owner recovers any materials and/or parts and retains or sells the same, after application of any applicable Betterment credit, the Owner's invoice to the Developer for its indirect costs shall credit the Developer with the salvage value of such materials and/or parts, determined in accordance with 23 C.F.R. Section 645.105(j).

(f) The determinations and calculations of Betterment described in this Paragraph 10 shall exclude right of way acquisition costs. Betterment in connection with right-of-way acquisition is addressed in Paragraph 16.

11. **Project Management.** The Developer and Owner will jointly provide project management during the Adjustment of the Owner Utilities.

12. **Utility Investigations**. At the Developer's request, the Owner shall assist the Developer in locating any utilities (including appurtenances) owned and/or operated by Owner and that may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the Adjusted Owner Utilities nor existing, unadjusted utilities owned or operated by the Owner are damaged during construction of the Project, the Owner shall mark in the field the location of all such utilities horizontally on the ground in advance of Project construction in the immediate area of such utilities.

13. **Inspection and Acceptance by the Owner.**

(a) Throughout the Adjustment construction hereunder, the Owner shall provide adequate inspectors for such construction. The work shall be inspected by the Owner's inspector(s) at least once each working day, and more often if such inspections are necessary for prudent installation. Further, upon request by the Developer or its contractors, the Owner shall furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual forty (40) hour work week and at such other times as reasonably required. The Owner agrees to promptly notify the Developer of any concerns resulting from any such inspection.

(b) The Owner shall perform a final inspection of the Adjusted Owner Utilities, including conducting any tests as are necessary or appropriate, within five (5) business days after completion of construction hereunder. The Owner shall accept such construction if it is consistent with the performance standards described in Paragraph 3, by giving written notice of such acceptance to the Developer within said five (5) day period. If the Owner does not accept the construction, then the Owner shall, not later than the expiration of said five (5) day period, notify the Developer in writing of its grounds for non-acceptance and suggestions for correcting the problem, and if the suggested corrections are justified, the Developer will comply. The Owner shall re-inspect any revised construction (and re-test if appropriate) and give notice of acceptance, not later than five (5) business days after completion of corrective work. The Owner's failure to inspect and/or to give any required notice of acceptance or non-acceptance within the specified time period shall be deemed acceptance.

(c) From and after the Owner's acceptance (or deemed acceptance) of an Adjusted Owner Utility, the Owner agrees to accept ownership of and full operation and maintenance responsibility for, such Owner Utility, subject to the one year construction warranty from date of acceptance of the utilities.

14. **Design Changes**. The Developer will be responsible for additional Adjustment design and/or construction costs necessitated by design changes to the Project, upon the terms specified herein.

15. **Field Modifications**. The Developer shall provide the Owner with documentation of any field modifications, which shall be jointly approved by Developer, Owner, and the professional engineering consultant with responsibility for the utility design and construction, including Utility Adjustment Field Modifications as well as minor changes as described in Paragraph 17(b), occurring in the Adjustment of the Owner Utilities.

16. **Real Property Interests**.

(a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the Developer, documentation acceptable to CTRMA indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to CTRMA's approval as part of its review of the Utility Assembly as described in Paragraph 2. Claims approved by CTRMA as to rights or interests are referred to herein as "Existing Interests".

(b) If acquisition of any new easement or other interest in real property (a "New Interest") is necessary for the Adjustment of any Owner Utilities, then the Developer by further agreement, shall be responsible for undertaking such acquisition. The Developer shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance

with the Developer's Project schedules. The Developer shall be responsible for the actual and reasonable acquisition costs of any such New Interest (including without limitation the Owner's reasonable overhead charges and legal costs as well as compensation paid to the landowner) excluding any costs attributable to Betterment as described in Paragraph 16(c), and subject to the provisions of Paragraph 16(e); provided, however, that all acquisition costs shall be subject to the Developer's prior written approval. Eligible acquisition costs shall be invoiced by the Owner and paid by the Developer pursuant to this Agreement, as a segregated component of the Owner's indirect costs described in Paragraph 6. Any such New Interest shall have a written valuation and shall be acquired in accordance with applicable law.

(c) The Developer shall pay only for replacement in kind of an Existing Interest (e.g., as to width and type), unless a New Interest exceeding such standard (i) is required in order to accommodate the Project or by compliance with applicable law, or (ii) is called for by the Developer in the interest of overall Project economy. Any New Interest which is not Developer's cost responsibility pursuant to the preceding sentence shall be considered a Betterment to the extent that it upgrades the Existing Interest which it replaces, or in its entirety if the related Owner Utility was not installed pursuant to an Existing Interest. Betterment costs shall be solely the Owner's responsibility.

(d) For each Existing Interest located within the final Project right of way, upon completion of the related Adjustment and its acceptance by the Owner, including legally comparable rights in land, the Owner to the extent allowed by Texas law and Owner's code of regulations agrees to execute and deliver a quitclaim deed or other appropriate documentation relinquishing such Existing Interest to CTRMA, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Interest. For each such Existing Interest relinquished by the Owner, the Developer shall do one of the following to compensate the Owner for such Existing Interest, as appropriate:

(i) If the Owner acquires a New Interest for the affected Owner Utility, the Developer shall reimburse the Owner for its actual and reasonable acquisition costs in accordance with Paragraph 16(b); or

(ii) If the Owner does not acquire a New Interest for the affected Owner Utility, the Developer shall compensate the Owner for the fair market value of such relinquished Existing Interest, as mutually agreed between the Owner and the Developer and supported by a written valuation.

The compensation provided to the Owner pursuant to either subparagraph (i) or subparagraph (ii) above shall constitute complete compensation to the Owner for the relinquished Existing Interest, and no further compensation

shall be due to the Owner from either the Developer or CTRMA on account of such Existing Interest.

(e) The Owner shall execute a Utility Joint Use Agreement (CDA-U-80A) in the form attached as Exhibit C for each Adjusted Owner Utility where required pursuant to CTRMA policies.

17. **Amendments and Modifications**. This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with Paragraph 17(a) or Paragraph 17(b) below.

(a) Except as otherwise provided in Paragraph 17(b), any amendment or modification to this Agreement or the Plans to be attached hereto shall be implemented by a Utility Adjustment Agreement Amendment ("UAAA") in the form of Exhibit B hereto. The UAAA form can be used for a new scope of work with concurrence of the Developer and CTRMA as long as the design and construction responsibilities have not changed. Each UAAA is subject to the review and approval of CTRMA and TxDOT, prior to its becoming effective for any purpose and prior to any work being initiated thereunder. The Owner agrees to keep and track costs separate from other work being performed.

(b) For purposes of this Paragraph 17(b), a "Utility Adjustment Field Modification" shall mean any horizontal or vertical design change from the Plans included in a Utility Assembly previously approved by CTRMA, due either to design of the Project or to conditions not accurately reflected in the approved Utility Assembly (e.g., shifting the alignment of an 8 in. water line to miss a roadway drainage structure). A Utility Adjustment Field Modification agreed upon by the Developer and the Owner does not require a UAAA, provided that the modified Plans have been submitted to the CTRMA for its review and comment, and the process for such review and comment has been completed as specified in the CDA. A minor change (e.g., an additional water valve, an added utility marker at a ROW line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification and will not require a UAAA, but shall be shown in the documentation required pursuant to Paragraph 15.

18. **Relationship of the Parties**. This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the Developer be considered as or represent itself to be an agent of the other.

19. **Entire Agreement**. This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.

20. **Assignment; Binding Effect; CTRMA as Third Party Beneficiary**. Neither the Owner nor the Developer may assign any of its rights or delegate any of its duties under this

Agreement without the prior written consent of the other party and of CTRMA, which consent may not be unreasonably withheld or delayed; provided, however, that the Developer may assign any of its rights and/or delegate any of its duties to CTRMA or to any other entity engaged by CTRMA to fulfill the Developer's obligations under the CDA, at any time without the prior consent of the Owner. This Agreement shall bind the Owner, the Developer, and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including without limitation any contractor or other party retained for the Adjustment work or the public in general; provided, however, that the Owner and the Developer agree that although CTRMA is not a party to this Agreement, CTRMA is intended to be a third-party beneficiary to this Agreement.

21. **Breach by the Developer**. If the Owner claims that the Developer has breached any of its obligations under this Agreement, the Owner will notify the Developer and CTRMA in writing of such breach, and the Developer shall have 30 days following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach; provided, however, that both during and after such period CTRMA shall have the right, but not the obligation, to cure any breach by the Developer. Without limiting the generality of the foregoing and except to the extent that CTRMA has withheld funds from the Developer due to a breach by the Developer which has damaged the Owner, (a) CTRMA shall have no liability to the Owner for any act or omission committed by the Developer in connection with this Agreement, including without limitation any reimbursement owed to the Owner hereunder, and (b) in no event shall CTRMA be responsible for any repairs or maintenance to the Owner Utilities Adjusted pursuant to this Agreement.

22. **Traffic Control**. The Developer shall provide traffic control made necessary by the Adjustment work performed by the Developer pursuant to this Agreement in compliance with the requirements of the Texas Manual on Uniform Traffic Control Devices. Betterment percentages calculated in Paragraph 10 shall also apply to the traffic control costs.

23. **Notices**. Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

The Owner:

Attn:
Address:
Phone:
Fax:

The Developer:

Attn: Bret Willuhn, Senior Project Manager
Address: 8200 Cameron Road, Suite 150
Phone: TBD

Fax: TBD

A party sending a notice of default of this Agreement to the other party shall also send a copy of such notice to CTRMA, to the attention of the CDA Utility Manager, at the following address:

CDA Utility Manager:

CTRMA
Attn: Brent Bright
Address: 8200 Cameron Road, Suite 154
Phone: TBD
Fax: TBD

Any notice or demand required herein shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by confirmed fax, or (d) by reliable messenger or overnight courier to the appropriate address set forth above. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deem delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party; CTRMA may designate another address by written notice to both parties.

24. **Approvals.** Any acceptance, approval, or any other like action (collectively "Approval" required or permitted to be given by either the Developer, the Owner or CTRMA pursuant to this Agreement:

(a) Must be in writing to be effective (except if deemed granted pursuant hereto), and

(b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval.

25. **Time.**

(a) Time is of the essence in the performance of this Agreement.

(b) All references to "days" herein shall be construed to refer to calendar days, unless otherwise stated.

(c) Neither the Owner nor the Developer shall be liable to the other for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence ("Force Majeure"), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts.

26. **Continuing Performance**. In the event of a dispute, the Owner and the Developer agree to continue their respective performance hereunder to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

27. **Equitable Relief**. The Developer and the Owner acknowledge and agree that delays in Adjustment of the Owner Utilities will impact the public convenience, safety and welfare, and that (without limiting the parties' remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto, subject to notice and a reasonable opportunity to cure, (and CTRMA as well, as a third party beneficiary) shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; provided, however, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.

28. **Authority.** The Owner and the Developer each represents and warrants to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.

29. **Cooperation**. The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner and the Developer to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the Developer agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the Developer's current and future construction schedules for the Project.

30. **Termination**. If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the Developer shall notify the Owner in writing and the Developer reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.

31. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.

32. **Captions**. The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the context of their respective paragraphs.

33. **Counterparts**. This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.

34. **Effective Date**. Except for the provisions of Paragraph 2(a) (which shall become effective immediately upon execution of this Agreement by both the Owner and the Developer without regard to CTRMA's signature), this Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the Developer) signing this Agreement, and (b) the completion of CTRMA's review and TxDOT's review as indicated by the signature of CTRMA's representative, below.

REVIEWED BY:

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____
Authorized Signature

Printed
Name: _____

Title: _____

Date:_____

By_____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

OWNER

DEVELOPER

Central Texas Mobility Constructors, LLC
[Print Developer Name]

By_____
Authorized Signature

Printed
Name: Bret Willuhn

Title: Senior Project Manager

Date: _____

EXHIBIT A

PLANS, SPECIFICATIONS, COST ESTIMATES

EXHIBIT B

UTILITY ADJUSTMENT AGREEMENT AMENDMENT
(Developer Managed)
CTRMA FORM CTRMA-CDA-U-35A-OM

EXHIBIT C

UTILITY JOINT USE AGREEMENT (CDA-U-80A)